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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/330,262    06/11/99    THEVELEIN    J    6-1032-041

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EXAMINER

YUCEL, I

ART UNIT

PAPER NUMBER

1636

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DATE MAILED: 09/19/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademark**

# Office Action Summary

Application No.  
**09/330,262**

Applicant(s)  
**Thevelein et al.**

Examiner  
**Remy Yucel**

Group Art Unit  
**1636**



☐ Responsive to communication(s) filed on \_\_\_\_\_.

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire ONE month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-41 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☐ Claim(s) \_\_\_\_\_ is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☒ Claims 1-41 are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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### **DETAILED ACTION**

Claims 1-41 are pending in the application.

#### ***Election/Restriction***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-25 and 36-41, drawn to methods of making a yeast strain and yeast strains so produced, classified in class 435, subclass 441.
- II. Claims 28 and 29, drawn to a mutant gene, classified in class 536, subclass 23.74.
- III. Claims 30 and 31, drawn to a mutant gene, classified in class 536, subclass 23.74.
- IV. Claim 33, drawn to a mutant gene, classified in class 536, subclass 23.74.

Claims 26, 27, 32, 34 and 35 are generic to groups II-IV. Should one of groups II-IV be elected, then claims 26, 27, 32, 34 and 35 would be examined with the elected group.

The inventions are distinct, each from the other because of the following reasons: The inventions of groups I-IV are distinct. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). Because the methods of making a yeast strain and strains so produced have different functions and different effects from the products of groups II-IV.

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The inventions of groups II-IV are distinct because they are drawn to different genes which encode different products and hence, have different functions and effects.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter and as shown by their different classification and because the searches required for all the groups is not coextensive, restriction for examination purposes as indicated is proper.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Conclusion***

Certain papers related to this application may be submitted to Art Unit 1636 by facsimile transmission. The faxing of such papers must conform with the notices published in the Official Gazette, 1156 OG 61 (November 16, 1993) and 1157 OG 94 (December 28, 1993) (see 37 CFR § 1.6 (d)). The Group 1600 FAX numbers are (703) 308-4242 or (703) 305-3014. Unofficial faxes may be sent to the examiner at (703) 305-7939. NOTE: If applicant *does* submit a paper by fax, the original signed copy should be retained by Applicant or Applicant's representative. NO DUPLICATE COPIES SHOULD BE SUBMITTED so as to avoid the processing of duplicate papers in the Office.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Remy Yucel, Ph. D. whose telephone number is (703) 305-1998. The examiner can normally be reached on Monday through Fridays from 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. George Elliott can be reached at (703) 308-4003.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.



Remy Yucel, Ph. D.  
Primary Patent Examiner  
Technology Center 1600